

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

BUREAU OF MEDICAL MARIHUANA REGULATION

MEDICAL MARIHUANA FACILITIES LICENSING ACT

EMERGENCY RULES

Filed with the Secretary of State on September 11, 2018

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

(By authority conferred on the department of licensing and regulatory affairs by section 206 of 2016 PA 281, MCL 333.27206, enacting section 2 of Act 281 of 2016, by section 3 of 2016 PA 282, MCL 333.27903, and by section 6 of MCL 333.26426, 2008, Initiated Law 1.)

FINDING OF EMERGENCY

These rules are promulgated by the department of Licensing and Regulatory Affairs (department) to establish emergency rules for the purpose of implementing the Medical Marihuana Facilities Licensing Act (act), 2016 PA 281, MCL 333.27101 et seq., which took effect December 20, 2016 and was recently amended by 2018 PA 10. The act provides for a state regulatory structure to license and regulate medical marihuana growers, processors, provisioning centers, secure transporters, and safety compliance facilities that interacts with the statewide monitoring system for commercial marihuana transactions; establishes a medical marihuana licensing board (Board) created within the department and appointed by the governor; and prescribes civil fines and sanctions and provides remedies.

The act includes an enacting section specifying that the legislature found it necessary for the promulgation of emergency rules to preserve the public health, safety, or welfare for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements. In addition, section 206 of the act requires the department, in consultation with the Board, to promulgate administrative rules and emergency rules as necessary to implement, administer, and enforce the act. Furthermore, section 206 specifies that the rules shall ensure the safety, security, and integrity of the operation of marihuana facilities.

To date, no administrative rules have been promulgated under the authority granted to the department, in consultation with the Board that has been created within the department. Specifically, there are no current administrative rules to ensure the safety, security, and integrity of the operation of marihuana facilities. Pursuant to section 401 of the act, beginning December 15, 2017, persons may apply to the Board created within the department for state operating licenses in the categories of class A, B, or C grower, processor, provisioning center, secure transporter, and safety compliance facility. The Board is required to review all applications for licensure, issue or deny issuance of a license, and inform each applicant of the Board's decision. To date, 16 state

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operating licenses have been issued because the processing and review of applications requires attention and numerous hours of review. As the process of issuing state operating licenses continues to improve and the board works diligently towards issuing further licenses, emergency rules are needed for the continued integrity of the licensing of marihuana facilities and to ensure continued access for patients.

If issuance is denied, the Board is required, upon request, to provide a public investigative hearing. In addition, any party aggrieved by an action of the Board suspending, revoking, restricting, or refusing to renew a license, or imposing a fine, shall be given a hearing before the Board upon request. There are no administrative rules currently in place that will provide for the implementation of these requirements as specified in the act.

In addition, the act requires the promulgation of administrative rules to prescribe the use of the statewide monitoring system to track all marihuana transfers, as provided in the Marihuana Tracking Act, 2016 PA 282, MCL 333.27901 et seq. To date, these administrative rules have not been promulgated. The statewide monitoring system is used to track and inventory marihuana and is a key component to preserving the integrity of the operation of marihuana facilities, monitoring the industry, investigating, and supporting compliance with the act to promote the public health, safety, or welfare.

If the complete process specified in the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 et seq. for the promulgation of rules were followed, the process would not be completed in time for the department to comply with the act's requirements to process applications according to the timelines specified in the act, provide administrative hearing procedures, or implement the tracking requirements. Furthermore, the administrative rules would not be promulgated prior to the issuance of state operating licenses, thus causing uncertainty and financial hardship to individuals or businesses that plan to apply for commercial state operating licenses.

The department, in consultation with the Board, therefore, finds that the preservation of the public health, safety, and welfare requires the promulgation of emergency rules as provided in section 48 without following the notice and participation procedure required by sections 41 and 42 of 1969 PA 306, as amended, being MCL 24.241, and MCL 24.242 of the Michigan Compiled Laws.

Rule 1. Terms; meanings.

Terms defined in the act have the same meanings when used in these rules unless otherwise indicated. Terms defined in the Emergency Rules filed May 30, 2018 have the same meanings when used in these rules unless otherwise indicated.

Rule 2. Temporary operation; limited circumstances; conditional.

(1) This emergency rule, while in effect, supersedes Rule 19 of the Emergency Rules filed May 30, 2018, and any extension, if applicable, of the Emergency Rules filed May 30, 2018. An applicant for a state operating license may temporarily operate a proposed marihuana facility that would otherwise require a state operating license if either of the following applies:

(a) The applicant's proposed marihuana facility is within a municipality that adopted an ordinance before December 15, 2017 but is pending the adoption of an ordinance pursuant to section 205 of

the act. The applicant shall submit an attestation on a form established by the department that includes the signature of the clerk of the municipality or his or her designee attesting to all of the following:

- (i) The municipality has adopted an ordinance before December 15, 2017.
- (ii) The municipality authorizes the temporary operation of the applicant.
- (b) The applicant's proposed marihuana facility is within a municipality that has adopted an ordinance pursuant to section 205 of the act before December 15, 2017. The applicant shall submit an attestation on a form established by the department that includes the signature of the clerk of the municipality or his or her designee attesting to all the following:
 - (i) The municipality has adopted an ordinance pursuant to section 205 of the act, including, if applicable, the disclosure of any limitations on the number or type of marihuana facilities, or both.
 - (ii) The municipality authorizes the temporary operation of the applicant. A resolution may be adopted by a municipality that authorizes the clerk of the municipality or his or her designee to sign the attestation form in subdivision (b) of this subrule.
- (2) A person that does not comply with this rule shall cease and desist operation of a proposed marihuana facility and may be subject to all the penalties, sanctions, and remedies under state and federal law, the act, or the rules.
- (3) An applicant that is temporarily operating under this rule is not guaranteed a state operating license.
- (4) For purposes of this rule only, an applicant shall apply for a state operating license as prescribed by the act and the rules no later than February 15, 2018. If the applicant does not apply for a state operating license as prescribed by the act and the rules no later than February 15, 2018, then the temporary operation may be used as a reason for denial of a license as prescribed in the act and the rules.
- (5) For purposes of this rule only, an applicant shall submit a complete marihuana facility license application no later than June 15, 2018. If the applicant does not submit a complete marihuana facility license application no later than June 15, 2018, then the temporary operation may be used as a reason for denial of a license as prescribed in the act and the rules.
- (6) The department shall issue or deny a state operating license under this rule on or before December 15, 2018. A municipality with an authorizing ordinance under subrule (1)(a) of this rule shall have adopted a new or amended ordinance pursuant to section 205 of the act and the rules no later than December 15, 2018.
- (7) An applicant under this rule that has been denied licensure or has not been issued a license by December 15, 2018 as provided in subrule (6) of this rule, is operating without a license and shall cease any operation. Any temporary operation after December 15, 2018 as provided in subrule (6) of this rule is considered unlicensed activity. Unlicensed activity may result in a referral to law enforcement for unlicensed activity. The department may notify the state police and department of attorney general of any unlicensed activity.

Rule 3. Temporary operation; scope.

- (1) An applicant operating under Rule 2 that is approved for a state operating license by the medical marihuana licensing board must pay the regulatory assessment within 10 business days of service of the notification of license approval by the department. Service is complete when placed in certified mail or sent electronically. The failure of an applicant to pay the regulatory assessment within 10 business days may result in disciplinary action.

(2) Upon the request of an applicant who is approved for a state operating license and who has paid the regulatory assessment as provided in subrule 1 of this rule, the act, and the rules, the department may withhold the issuance of a license until December 1, 2018. The applicant may continue to operate the marihuana facility under Rule 2 until the department issues the state operating license.

(3) Applicants temporarily operating a proposed marihuana facility under Rule 2 may only transfer marihuana product to, or receive transfers of marihuana product from, a licensee, another applicant operating under Rule 2, a registered primary caregiver, or a registered qualifying patient.

(4) A person who was issued a license prior to the effective date of these rules may operate under Rule 2 provided the license is returned to the department within 10 business days of the effective date of these rules.

Rule 4. Transition period.

(1) This rule applies only to an applicant operating under Rule 2 who is subsequently issued and receives a state operating license that had been held in abeyance by the department under Rule 3(2).

(2) Upon receipt of a state operating license, within a 30-calendar-day period beginning the day a state operating license is received, a licensee must do all of the following, as applicable:

(a) Record all marihuana product in the licensee's possession in the statewide monitoring system.

(b) Tag or package all inventory that has been identified in the statewide monitoring system.

(c) If licensed as a grower or processor, comply with all testing requirements as prescribed by the act and the Emergency Rules filed May 30, 2018 prior to transferring marihuana product.

(d) If licensed as a provisioning center, comply with all of the following:

(i) Prior to the sale or transfer of marihuana product that has not been tested in compliance with all testing requirements as prescribed by the act and the Emergency Rules filed May 30, 2018, obtain a signed written acknowledgement from the registered primary caregiver or registered qualifying patient consenting to the sale or transfer of the untested marihuana product. The signed written acknowledgment shall be made available to the department through its investigators, agents, auditors, or the state police upon request.

(ii) Prior to any sale or transfer, verify with the statewide monitoring system that a registered qualifying patient or a registered primary caregiver holds a valid, current, unexpired, and unrevoked registry identification card.

(iii) Prior to any sale or transfer, confirm that a registered qualifying patient or a registered primary caregiver presented his or her valid driver license or government-issued identification card that bears a photographic image of the qualifying patient or primary caregiver.

(iv) Determine, if completed, any transfer or sale will not exceed the daily purchasing limit prescribed in Rule 41 of the Emergency Rules filed May 30, 2018.

(3) At any time during this 30-calendar-day period and thereafter, a marihuana facility is subject to an inspection by the department, through its investigators, agents, auditors, or the state police.

Shelly Edgerton, Director
Department of Licensing and Regulatory Affairs

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Department of Licensing and Regulatory Affairs that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.

Rick Snyder, Governor

Date